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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,058	09/12/2003	Jewly Sandroussi	25850-011 UTIL	8339

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,058

Applicant(s)

SANDROUSSI ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 5, line 29 "log" should read - - long - - . On page 12, lines 24-25 the listed items are yarns and not fabrics as stated.

Appropriate correction is required.

The use of the trademark LYCRA has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology, spandex.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claims 13,15 and 17 are objected to because of the following informalities: Claim 13 depends on itself, claim 15 depends on claim 16 and claim 17 depends on claim 18. This is incorrect since claims cannot depend from themselves or from a preceding claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 9, 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 contains the trademark/trade name LYCRA/ELASTANE. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe spandex and, accordingly, the identification/description is indefinite. Only the generic terminology should be used in the claims.

In claim 9 there is no antecedent basis for "the top half", in claim 15 there is no antecedent basis for "the arm holes" and "the shoulder seams" and in claim 17, lines 2-4 there is no antecedent basis for "the dress", "the neckline", "the shoulder seams" and "the arm holes".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Balit (US 5,996,120).

In regard to claims 1-3 and 6-10 Balit discloses an integrated garment (bodysuit, swimsuit, bra or other outer clothing- as described in Balit, col. 5, lines 5-17 and col. 2, lines 46-49) with an outer layer and an inner layer with a perimeter and a support structure from the front of the garment to the back in at least a bust region and with the inner layer including at least two different stitch patterns (as described in col. 2, lines 54-59, 64- col. 3, line 28). Each of the stitch patterns has a respective yarn with the inner layer being substantially attached along at least a portion of the perimeter to the outer garment. (See Balit, figures 1 and 2). Balit discloses the at least two stitch patterns as being a maximum support stitch (14), a medium support stitch (16) and a soft selection area stitch (11) all located as claimed. (See Balit, col. 6, line 52 – col. 7, line 43). Balit also discloses the support structure including at least two different yarns selected from the claimed group. Balit discloses the inner layer as being substantially continuous around the circumference of the top end of the outer layer and is attached across the entirety of the perimeter of the top end; the inner layer is smaller than the outer garment and is shaped as claimed in addition to being attached to the inside of the outer layer as a full liner. (See Balit, col. 5, lines 18-21 and figures 1 and 2). The top end of the Balit liner, as seen in figures 1 and 2 would follow a common top end circumference of a body suit or a swimsuit.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,5,11,12,14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balit (US 5,996,120) .

Balit discloses the invention substantially as claimed. However, Balit does not specifically disclose the support structure as being of cotton or microfiber with elastic/spandex yarns therein. Balit discloses the use of nylon and spandex. It is well known in bodysuit manufacturing to use cotton/microfiber and spandex fibers to achieve a desired aesthetic effect and level of comfort to the wearer. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to select any known fiber content of yarn such as cotton/microfiber material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice such as to provide improved comfort to the wearer or a certain aesthetic effect.. In re Leshin, 126 USPQ 416. Balit discloses the outer layer as being any outer clothing layer which would include a dress,sweater, bodysuit with sleeves,top,shirt etc. The selection of any outer garment would be obvious especially those which are commonly worn with support garments. Substituting the undergarment with the liner as disclosed by Balit within any known outer layer garment would be an obvious design choice expedient

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substitution in order to achieve a desired aesthetic effect, comfort to the wearer or end use for the wearer.

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balit (US 5,996,120) in view of Feigenbaum et al (US 4,916,755).

Balit discloses the invention substantially as claimed. However, Balit does not specifically disclose the attachment of the liner to the outer layer as claimed.

Feigenbaum et al discloses the outer garment attached to the liner along the perimeter and armholes as claimed. (See col. 5, lines 9-15). Accordingly it would have been obvious to attach the liner of Balit to the outer layer as disclosed by Feigenbaum et al in order to provide a secure attachment of the liner to the outer layer along the entire perimeter of the garment for an even more secure attachment and so that the liner would lie flat within the outer layer and not separate in use.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
